

# **Additional Questions and Answers on the application of the Regulation (EU) N° 1169/2011 on the provision of food information to consumers**

## **1 Distance selling**

**1.1 Article 14 of the FIC Regulation states that when prepacked food is sold through distance selling, all the mandatory food information has to be available to customers before the purchase is concluded. What should be understood by “before the purchase is concluded”?**

In the case of prepacked food offered for sale by means of distance selling, all the mandatory food information must be provided before the stage of purchase offer.

**1.2 How can a business comply with the FIC Regulation when it sells food on line for which certain particulars are variable from product to product?**

Consumers should be given the necessary information to be allowed to make informed choices. Companies should aim to provide the same level of information on food sold on-line and on labels. However some of the mandatory particulars may be variable from product to product (*e.g.* country of origin, where required).

In a spirit of a pragmatic approach, a general indication should be given on the website that would accordingly inform the consumer of the different possibilities (*e.g.* the country of origin for a product may be UK, IRL or BE). However, the specific detail (*i.e.* the precise country of origin of the purchased product) must always be given at the moment of delivery.

**1.3 A company sells a food product priced per weight through the website; each product will be individually priced. However, it is not possible to provide the weight and price for each product on the website. Can the company list a chicken by a range of weights, give the price per kilo on the website and provide the specific weight on the label on delivery?**

When the product weight cannot be calculated in advance, the manner in which the weight is to be calculated must be communicated to the consumers before the purchase is concluded. [For example, in the case of a chicken, retailers may want to give customers a range of options, *e.g.* small (0.9-1.19Kg), medium (1.20 – 1.75kg) and large (1.80 - 2.10Kg).] In any event, the specific weight must always been given at the moment of delivery.

**1.4 Certain food business operators use catalogues to promote prepacked food products and/or accept orders be placed by phone. How can they ensure compliance with the information requirements provided in the FIC Regulation?**

All mandatory food information, with the exception of the date of durability or the ‘use by’ date, must appear on the catalogue that supports the distance selling or be provided through other

appropriate means clearly identified by the food business operator, *e.g.* provision of an internet link/address [or a bar code to be scanned], which would provide all necessary information for each specific product, without any supplementary costs for the consumer.

As regards purchases concluded by phone, the food business operator must ensure that all the mandatory food information, apart from the date of durability or the 'use by' date, is communicated to the consumer before the purchase is concluded and without any supplementary costs. [The information should not be provided only and simply upon request by the consumer.]

### **1.5 From time to time, due to stock availability, companies selling on-line substitute items when the item ordered by the customer is unavailable. What are the information requirements in such case?**

The consumer should be made aware through a clear statement on the website that due to stock availability, from time to time, items could be substituted. Should that be the case, the consumer must be informed before delivery by appropriate means, *e.g.* by email or phone, that its ordered product is unavailable and there is a possibility for a substitute item. All required mandatory food information concerning the substitute item must be communicated to the consumer before delivery. Upon delivery, all mandatory food information must be available.

### **1.6 What kind of information 'takeaway' businesses where food is ordered over the telephone or the internet must provide to the final consumer?**

Any product which would have been sold in-store as non prepacked or pre-packed for direct sale is considered to be non prepacked or pre-packed for direct sale for the purpose of distance selling, regardless of the fact that they could be delivered in a bag for transportation and hygienic reasons.

The key information, which should be available to consumers when placing the order, is allergen/intolerance information, where substances in Annex II are used in the manufacture of a food. The business should inform consumers of the allergenic ingredients used in the product recipe. [However, the allergen/intolerance information must not be provided only and simply upon request by the consumer.]

In addition, the allergen information has to also be available when the goods are delivered.

Member States can extend the list of mandatory requirements for non prepacked foods sold in their territories and therefore companies should check whether they are required to provide further information in their own country.

### **1.7 The composition of products can change, due to recipe improvements and reformulation. Different shops will have different stock levels of the old and the new recipe; at what point, do food business operators need to update the information on their website with the new recipe?**

Food business operators need to decide, based on levels of stocks of old and new recipe, at what point they need to change the details on their website. If the recipe change involves the introduction of a substance causing an allergy or intolerance, it is essential to change the information to the new recipe immediately, when it is put on sale.

Retailers should clearly state on their website that consumers should always check the information on the product label upon delivery.

### **1.8 Some frozen products orders may well have been taken before the product had been frozen. Is the date of freezing considered as a marking date for labelling purposes?**

The date of first freezing is dealt in Annex X of the FIC Regulation and can be considered as a marking date alongside the date of minimum durability and the 'use-by' date. Such marking dates do not need to be available before the purchase is concluded. However, they should be available at the moment of delivery.

### **1.9 A business runs an internet site hosting a commercial web page that allows small caterer businesses to sell their foods via the internet. What responsibilities does the owner of the website have in ensuring the correct information is present on the individual pages of the small businesses?**

The owner of the website must ensure that the catering businesses:

- are aware that the FIC Regulation applies to the caterers;
- as far as prepacked foods are concerned:
  - that all mandatory food information, except the marking dates, must be available before the purchase is concluded and must appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator without any supplementary costs for the consumers;
  - that all mandatory particulars are available at the moment of delivery.
- as far as non prepacked foods are concerned:
  - at the very least, they need to provide the consumers with allergen/intolerance information before a purchase is concluded;
  - there may additional mandatory information required by national authorities.

If the owner of the website is not just hosting those catering businesses but the consumers pay the owner of the website and the caterer delivers the food to the consumer for which an agreed amount is paid to the latter by the owner of the website, then the owner must ensure that the caterer complies with the FIC Regulation.

### **1.10 A food business operator is based in a country outside the EU. Occasionally, EU consumers order food from his website. Does he need to ensure compliance with the FIC Regulation?**

If the website of the food business operator established in a third country aims at consumers in his own country or a country other than the EU, then any EU consumers buying food from that website, they would bring in food into the EU as a personal import and would therefore be responsible for the information on the food.

If, however, the website of the food business operator established in a third country aims at EU consumers, he would need to ensure compliance with the FIC Regulation.

**1.11 Where prepacked food intended for the final consumer but marketed at a stage prior to the sale to the final consumer (and where sale to a mass caterer is not involved at that stage) is offered for sale by means of distance communication, are all the mandatory particulars foreseen in Article 8(7) of the FIC Regulation (which may be delivered on the commercial documents) required to be available before the purchase is concluded?**

Article 14 of the FIC Regulation on distance selling is intended to cover the offer of foods for sale to the final consumer [or to mass caterers] and it does not cover business to business transactions.